

REMARKS

Claims 1-55 are rejected. Claims 1-55 are pending. Applicant respectfully requests further examination and reconsideration in view of the remarks set forth below. Applicant believes that the amendments herein to the patent application do not add new matter to it.

35 U.S.C. 101 Rejections

Claims 1-55 are rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. Applicant has accordingly amended independent Claims 1, 8, 15, 24, 33, 39, 45, and 54, upon which Claims 2-7, 9-14, 16-23, 25-32, 34-38, 40-44, and 46-53 depend, respectively. Applicant respectfully submits that Claims 1-55 as herein amended are allowable.

Claims 1-55 stand rejected under 35 U.S.C. Section 101 for being directed to non-statutory subject matter. Moreover, MPEP 2106 is cited as defining non-statutory subject matter. However, MPEP 2106 clearly states that it does not constitute substantive rulemaking and hence it does not have the force and effect of law. Thus, it is improper to rely on subject matter of MPEP 2106 that does not have the force and effect of law to determine whether a claimed invention is statutory.

In particular, it is stated on page 2 of the Final Office Action that the claimed invention is non-statutory subject matter because it simply involves manipulation of abstract ideas without some claimed practical application. Moreover, the Schrader case

(22 F. 3d 290 (Fed. Cir. 1994)) and the Warmerdam case (33 F. 3d 13545 (Fed. Cir. 1994)) are cited as examples of non-statutory subject matter that involve manipulation of abstract ideas (a bid in the Schrader case and a bubble hierarchy in the Warmerdam case.

It is respectfully submitted that the non-statutory subject matter rejection against claims 1-55 is not supported by patent requirements that actually have the force and effect of law. First, the Supreme Court has acknowledged that Congress intended 35 U.S.C. Section 101 to extend to anything under the sun that is made by man, that falls within one of the four stated categories of statutory subject matter, and that is not a law of nature, natural phenomena, or an abstract idea. It was not contended in the Final Office Action that Claims 1-55 fell outside one of the four stated categories of statutory subject matter. Although it was argued in the Final Office Action that the subject matter of Claims 1-55 was directed to manipulation of abstract ideas, it was not argued that the subject matter of Claims 1-55 was simply an abstract idea, which the Supreme Court categorized as non-statutory subject matter.

Secondly, the U.S. Federal Circuit Court of Appeals has ruled (State Street v. Signature, 149 F. 3d 1368, (Fed. Cir. 1998)) that regardless of the statutory category in which the invention subject matter falls, the invention subject matter is statutory if it produces a useful, concrete, and tangible result. Examples of useful, concrete, and tangible results include producing a final share price after a series of mathematical calculations (State Street) and producing a smooth waveform that is displayed after a series of mathematical calculations (In re Alappat, 33 F. 3d 1526, (Fed. Cir. 1994)). The

final share price is a number, which is an abstract concept. Moreover, mathematical calculations (or “manipulations”) produced the final share price. Yet, the State Street court found that the invention produced a useful, concrete, and tangible result.

Further, the State Street court held that applying the “mathematical algorithm” analysis of the Freeman-Walter-Abele test to determine whether the claimed subject matter was an unpatentable abstract idea, has little applicability to determining the presence of statutory subject matter. According to the State Street court, application of the “mathematical algorithm” analysis of the Freeman-Walter-Abele test could be misleading because a process, machine, manufacture, or composition of matter employing a law of nature, natural phenomenon, or abstract idea is patentable subject matter if it produces a useful, concrete, and tangible result even though a law of nature, natural phenomenon, or abstract idea would not, by itself, be patentable. Both the Schrader case and the Warmerdam case applied the “mathematical algorithm” analysis to find the claimed subject matter as being non-statutory. Thus, the Schrader case and the Warmerdam case are not representative of current patent law and should not be used in supporting the non-statutory argument.

Applying the useful, concrete, and tangible result rule, Claims 1-55 produce a useful, concrete, and tangible result--network security management through use of the described groups. Therefore, it is respectfully submitted that Claims 1-55 are directed to statutory subject matter under 35 U.S.C. Section 101. The State Street, Schrader, and the Warmerdam decisions are attached to this paper.

35 U.S.C. 102(b) Rejections

Claims 1-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Agestam et al., U.S. Patent No. 5,512,885 (hereinafter Agestam). Applicant respectfully asserts that subject matter of currently amended independent Claim 1 is not shown or suggested by Agestam. For instance, currently amended independent Claim 1 recites, in part, “A method of creating a desired group of a flexible group structure, comprising: selecting one or more particular groups... indicating whether said selected particular group is to be included in or excluded from said desired group (emphasis added),” which is not shown or suggested by Agestam. Applicant understands Agestam to provide different categories of users in a data network having closed user groups the possibility of communicating with other categories of users outside the closed user group while disallowing prohibited contacts between the groups (col. 1, ln. 66- col. 2, ln. 5). More specifically, Applicant understands Agestam to utilize an identity to allow all group members to get into contact with a public group while not permitting communication between members with the same identities (col. 3, ln. 6-34). In the example of Fig. 2, positive (+) and negative (-) polarity have been used (col. 3, ln.13-16); however, such use of polarity (an identity) does not teach or suggest selecting one or more particular groups and indicating whether the selected particular group is to be included in or excluded from the desired group, as claimed in currently amended independent Claim 1. The positive (+) and negative (-) polarity are provided to the group members of a group instead of being provided to the group itself, as in the invention of Independent Claim 1 (see Agestam col.3, lines 10-16).

As Agestam fails to teach or suggest at least one element recited in currently amended independent Claim 1, Applicant respectfully contends that currently amended independent Claim 1 is not anticipated by Agestam. Therefore, Applicant respectfully submits that currently amended independent Claim 1 is allowable over Agestam. Since Claims 2-7 depend from currently amended independent Claim 1, Applicant believes that Claims 2-7 are also allowable over Agestam.

Currently amended independent Claim 8 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 8 overcomes the rejections under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claims 9-14 depend from currently amended independent Claim 8, Applicant believes that Claims 9-14 are also allowable over Agestam.

Currently amended independent Claim 15 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 15 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claims 16-23 depend from currently amended independent Claim 15, Applicant believes that Claims 16-23 are also allowable over Agestam.

Currently amended independent Claim 24 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended

independent Claim 24 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claims 25-32 depend from currently amended independent Claim 24, Applicant believes that Claims 25-32 are also allowable over Agestam.

Currently amended independent Claim 33 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 33 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claims 34-38 depend from currently amended independent Claim 33, Applicant believes that Claims 34-38 are also allowable over Agestam.

Currently amended independent Claim 39 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 39 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claims 40-44 depend from currently amended independent Claim 39, Applicant believes that Claims 40-44 are also allowable over Agestam.

Currently amended independent Claim 45 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 45 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1.

Since Claims 46-53 depend from currently amended independent Claim 33, Applicant believes that Claims 46-53 are also allowable over Agestam.

Currently amended independent Claim 54 recites subject matter similar to that of currently amended independent Claim 1 mentioned above. Thus, currently amended independent Claim 54 overcomes the rejection under 35 U.S.C. 102(b) based on rationale similar to that described above with reference to currently amended independent Claim 1. Since Claim 55 depends from currently amended independent Claim 54, Applicant believes that Claim 55 is also allowable over Agestam.

CONCLUSION

In view of the foregoing remarks, the Applicant respectfully submits that the pending claims in the instant patent application are in condition for allowance. The Applicant respectfully requests reconsideration of the Application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Applicant's undersigned representative at the below listed phone number.

Respectfully submitted,

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